

acceptable plan with the owner of those facilities and, where appropriate, the National Transportation Safety Board for performing the testing.

(e) When the information obtained from an inspection or from other appropriate sources indicates that further OPS action is warranted, the OPS issues a warning letter under §190.205 or initiates one or more of the enforcement proceedings prescribed in §§190.207 through 190.235.

[45 FR 20413, Mar. 17, 1980, as amended by Amdt. 190-3, 56 FR 31090, July 9, 1991; Amdt. 190-6, 61 FR 18513, Apr. 26, 1996; Amdt. 190-7, 61 FR 27792, June 3, 1996; Amdt. 190-7, 63 FR 7722, Feb. 17, 1998]

#### § 190.205 Warning letters.

Upon determining that a probable violation of 49 U.S.C. 60101 *et seq.* or any regulation or order issued thereunder has occurred, the Associate Administrator, OPS, may issue a Warning Letter notifying the owner or operator of the probable violation and advising the owner or operator to correct it or be subject to enforcement action under §§190.207 through 190.235.

[Amdt. 190-6, 61 FR 38403, July 24, 1996]

#### § 190.207 Notice of probable violation.

(a) Except as otherwise provided by this subpart, a Regional Director begins an enforcement proceeding by serving a notice of probable violation on a person charging that person with a probable violation of 49 U.S.C. 60101 *et seq.* or any regulation or order issued thereunder.

(b) A notice of probable violation issued under this section shall include:

(1) Statement of the provisions of the laws, regulations or orders which the respondent is alleged to have violated and a statement of the evidence upon which the allegations are based;

(2) Notice of response options available to the respondent under §190.209;

(3) If a civil penalty is proposed under §190.221, the amount of the proposed civil penalty and the maximum civil penalty for which respondent is liable under law; and

(4) If a compliance order is proposed under §190.217, a statement of the remedial action being sought in the form of a proposed compliance order.

(c) The Associate Administrator, OPS may amend a notice of probable violation at any time prior to issuance of a final order under §190.213. If an amendment includes any new material allegations of fact or proposes an increased civil penalty amount or new or additional remedial action under §190.217, the respondent shall have the opportunity to respond under §190.209.

[45 FR 20413, Mar. 27, 1980, as amended by Amdt. 190-6, 61 FR 18513, Apr. 26, 1996]

#### § 190.209 Response options.

Within 30 days of receipt of a notice of probable violation, the respondent shall respond to the Regional Director who issued the notice in the following way:

(a) When the notice contains a proposed civil penalty—

(1) Pay the proposed civil penalty as provided in §190.227 and close the case with prejudice to the respondent;

(2) Submit written explanations, information or other materials in answer to the allegations or in mitigation of the proposed civil penalty; or

(3) Request a hearing under §190.211.

(b) When the notice contains a proposed compliance order—

(1) Agree to the proposed compliance order;

(2) Request the execution of a consent order under §190.219;

(3) Object to the proposed compliance order and submit written explanations, information or other materials in answer to the allegations in the notice of probable violation; or

(4) Request a hearing under §190.211.

(c) Failure of the respondent to respond in accordance with paragraph (a) of this section or, when applicable, paragraph (c) of this section, constitutes a waiver of the right to contest the allegations in the notice of probable violation and authorizes the Associate Administrator, OPS, without further notice to the respondent, to find facts to be as alleged in the notice of probable violation and to issue a final order under §190.213.

[45 FR 20413, Mar. 27, 1980, as amended by Amdt. 190-1, 53 FR 1635, Jan. 21, 1988; Amdt. 190-6, 61 FR 18513, Apr. 26, 1996; Amdt. 190-7, 61 FR 27792, June 3, 1996; Amdt. 190-7, 63 FR 7722, Feb. 17, 1998]